



# CITY OF HUNTINGTON BEACH

## Inter Office Communication

### Planning Department

**TO:** Planning Commission

**FROM:** Howard Zelefsky, Director of Planning

**BY:** Ricky Ramos, Associate Planner

**DATE:** July 22, 2003

**SUBJECT: **CONDITIONAL USE PERMIT NO. 02-04/COASTAL DEVELOPMENT PERMIT NO. 02-05 (POSEIDON SEAWATER DESALINATION PLANT) – REVISED CONDITIONS OF APPROVAL****

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At the July 8, 2003 meeting the Planning Commission continued the entitlements referenced above to the July 22, 2003 meeting due to the lateness of the hour. The Planning Commission voted to individually submit any proposed revisions to the recommended conditions of approval. Staff received proposed revisions from Commissioners Scandura, Davis, Kokal, and Dingwall. Attachment No. 1 contains the recommended conditions of approval, which incorporate many of the individual commissioners proposed revisions as well as two items that were discussed at the July 8 meeting (i.e. cultural resources and Irvine Ranch Water District issue). Due to time constraints staff was not able to incorporate proposed revisions from Commissioners Kokal and Dingwall in this staff report. However, staff will be prepared to respond at the July 22, 2003 hearing. All comments received from the Commissioners are provided under a separate cover memo.

Several of the items suggested by the individual commissioners are not recommended for inclusion in the Conditional Use Permit/Coastal Development Permit conditions. These items are presented below.

Commissioner Scandura:

1. Revise Condition 6(s) – “All applicable school mitigation **and park fees** shall be paid pursuant to state law.”

(This revision is not necessary because it is already covered under code requirement no. 9 on Attachment no. 1.24)

2. Add Condition 7(q) – “All exterior lighting of the facility will be directed away from the wetlands, which should be shield from illumination.”

(Staff recommends revised Condition 1(j) on Attachment no. 1.5 in lieu of this condition)

Commissioner Davis:

1. Add a condition that should the City be sued, Poseidon will indemnify for all legal expenses incurred by the city or its agents or employees.

(City Attorney supports the addition of this condition. Suggested wording is as follows:

The applicant/property owner and each successor in interest to the property which is the subject of this project shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.)

2. Add a condition that the Conditional Use Permit shall expire on April 1, 2011.

(This condition is not recommended based on response from City Attorney that the vast majority of legal cases dealing with the duration of conditional use permits (CUP) provide that a valid CUP, for which the use has been commenced, runs with the land and does not expire automatically.)

3. Add a condition that the applicant shall install a satisfactory mechanical device such that only 20 percent of the water diverted from AES can be used for desalination purposes.

(This condition addresses the potential impacts of a more concentrated discharge to the marine/coastal environment. However, the Environmental Impact Report (EIR) certified by the Planning Commission on July 8, 2003 concludes a less than significant impact in this regard; therefore, no mitigation measures or conditions are necessary.)

4. Add a condition requiring written confirmation by AES that they are bound by condition no. 3 above and that they will supply logs, documents, reports and records at the request of the City, reflecting the amounts, dates and times of water diverted to Poseidon. Further, AES may only release water to Poseidon when they are actually making electricity.

(See explanation under condition no. 3 above. Additionally, even when AES is not generating electricity they are still pumping 126 MGD).

5. Add a condition that in the interim between granting this CUP and 2011, Poseidon shall be subject to all restrictions imposed on AES relative to their operations by any other agency. This is not a grant of authority to exceed the restrictions imposed by this permitting process, but that the conduct or conditions imposed by another agency in the interim may further restrict, rather than enlarge, the ability of Poseidon to operate.

(This condition is not recommended because the City cannot usurp the authority of other agencies to regulate a use. Poseidon is expected to seek its own separate permits which may have different limitations.)

6. Add a condition that the applicant treat a gross amount of urban run-off equal to 5% of their daily drinking water output, and dispose of the concentrate of the run-off in an approved, non-ocean dump site, and that the potable water produced be returned to the ground water replenishment system.

(This was not identified as a significant impact in the EIR; therefore, no mitigation measures or conditions are necessary. Furthermore, urban runoff is a local issue governed by individual NPDES permits and Best Management Practices.)

HZ:SH:MBB:RR